

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA
AT BLUEFIELD

LORI ANN BUTLER,

Plaintiff,

v.

CIVIL ACTION NO. 1:02-0422

JO ANNE BARNHART,
Commissioner of Social Security,

Defendant.

MEMORANDUM OPINION AND JUDGMENT ORDER

By Standing Order, this action was referred to United States Magistrate Judge R. Clarke VanDervort for submission of findings and recommendation regarding disposition pursuant to 28 U.S.C. § 636(b)(1)(B). Magistrate Judge VanDervort submitted to the court his Findings and Recommendation on May 6, 2005, in which he recommended that the court deny defendant's motion to remand pursuant to sentence six and, alternatively, if the Commissioner requests remand pursuant to sentence four, vacate or reverse the decision of the Commissioner, remand the case to the Commissioner pursuant to sentence four of 42 U.S.C. § 405(g) for further proceedings before the Appeals Council, and dismiss the case from the court's active docket.

In accordance with the provisions of 28 U.S.C. § 636(b), plaintiff was allotted ten days and three mailing days in which to file any objections to Magistrate Judge VanDervort's Findings and Recommendation. The failure of any party to file such objections within the time allowed constitutes a waiver of such

party's right to a de novo review by this court. Snyder v. Ridenour, 889 F.2d 1363 (4th Cir. 1989).

The United States filed a motion requesting remand pursuant to sentence four and indicated that plaintiff had no objection to the motion. Accordingly, the court adopts the Findings and Recommendation of Magistrate Judge VanDervort as follows:

1. Defendant's motion to remand under sentence six is **DENIED** (doc. #21) and the motion to remand pursuant to sentence four (doc. #23) is **GRANTED**;
2. The final decision of the Commissioner is **VACATED**;
3. The case is **REMANDED** to the Commissioner pursuant to the fourth sentence of 42 U.S.C. § 405(g) for further proceedings as outlined in the Proposed Findings and Recommendation; and
4. This Clerk is directed to remove this case from the court's active docket.

The Clerk is further directed to forward certified copies of this Memorandum Opinion and Judgment Order to counsel of record.

IT IS SO ORDERED this 24th day of May, 2005.

ENTER:

A handwritten signature in cursive script, reading "David A. Faber", is written over a horizontal line.

David A. Faber
Chief Judge